

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayner  
Marshall Johnson  
Ken Nickolai  
Thomas Pugh  
Phyllis A. Reha

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Application to the  
Minnesota Public Utilities Commission for  
a Pipeline Routing Permit for a Crude Oil  
Pipeline and Associated Aboveground  
Facilities

ISSUE DATE: February 16, 2006

DOCKET NO. PL-5/PPL-05-2003

NOTICE OF HEARING

**PROCEDURAL HISTORY**

On January 5, 2006, Minnesota Pipe Line Company (MPLC or the Company) filed a request for a pipeline routing permit pursuant to Minn. Stat. § 116I.015 and the Pipeline Route Selection procedures in Minn. Rules, Parts 4415.0045 to 4415.0100.

On January 24, 2006, Laura and John Reinhardt filed comments on the issue of landowner notification.

On January 26, 2006, the Minnesota Department of Commerce (the Department) filed comments.

The Commission met on February 5, 2006 to consider this matter.

**FINDINGS AND CONCLUSIONS**

**I. Jurisdiction**

The Commission has jurisdiction over applications for route permits for the pipeline project at issue in this matter, under Minn. Stat. § 116I.015. Subdivision 2 of that statute states:

Subd. 2. **Prohibition.** A person may not construct a pipeline without a pipeline routing permit issued by the Environmental Quality Board unless the pipeline is exempted from the board's routing authority under this section or rules adopted under this section. A pipeline requiring a permit may only be constructed on a route designated by the board.<sup>1</sup>

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<sup>1</sup> Prior to recently enacted energy legislation, the Commission had the responsibility and authority to issue certificates of need and the Environmental Quality Board (EQB) had the responsibility and authority to issue site or route permits. In 2005, the Minnesota Legislature transferred the EQB's siting and routing authority to the Commission and encouraged a certain level of combining of the two processes. See S.F. 1368 - 84th Legislative Session, Article 3, Section 17 and Minn. Stat. \* 216B.243, subd. 4.

Consideration of the Company's Route Permit Application will proceed in accordance with the requirements of Minn. Stat. §§ 116I.015 and Minn. Rules, Chapters 1405 and 4415.

## **II. Referral to Office of Administrative Hearings**

The Commission finds that it cannot satisfactorily resolve all questions regarding the reasonableness of the proposed route on the basis of the Applicants' filing. The Commission will therefore refer the matter to the Office of Administrative Hearings for contested case proceedings.

The Administrative Law Judge assigned to this matter will conduct hearings as described in this Notice and submit a Report to the Commission.<sup>2</sup> Following receipt of the Administrative Law Judge's report, the Commission will proceed to make its final decision in accordance with Minn. Stat. Chapters 14 and 116C.<sup>3</sup>

## **III. Administrative Law Judge**

The Administrative Law Judge assigned to this case is Beverly Jones Heydinger. Her address and telephone number are as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138; (612) 341-7606.

## **IV. Hearings**

### **A. Prehearing Conference**

A prehearing conference will be held in this case on Friday, March 17, 2006, at 9:30 a.m. in the Large Hearing Room at the offices of Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101. The prehearing conference will be held jointly with the prehearing conference scheduled for the Company's Certificate of Need proceeding for the MinnCan Project, which also has been referred to the OAH for a contested case proceeding.

Pursuant to Minn. Rules, Part 1405.1100, the purpose of the prehearing conference is to simplify the issues to be determined, to obtain stipulations to foundation for testimony or exhibits, to discuss schedules for hearings and other procedural events, and to resolve other matters that may be necessary or appropriate. Potential interveners, and other interested persons, may attend the prehearing conference.

The administrative law judge may require the parties to file a prehearing statement prior to the prehearing conference which shall contain such items as the administrative law judge deems necessary to promote a useful prehearing conference. A prehearing conference shall be an informal proceeding conducted expeditiously by the Administrative Law Judge. Agreements on the simplification of issues, amendments, stipulations, or other matters may be entered on the record or may be made the subject of an order by the administrative law judge.

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<sup>2</sup> Minn. Rules, Part 1405.2400.

<sup>3</sup> Minn. Rules, Part 1405.2500.

## **B. Public Hearing/Contested Case Hearing**

A public hearing following the contested case format prescribed by Minnesota statutes<sup>4</sup> and rules<sup>5</sup> will be held in this matter. The hearing will include cross-examination by parties, questioning by interested persons, and direct testimony or comments from the public. Conduct of the hearing is addressed more fully below in Section VII (Procedural Outline), below.

Since this Order is transferring jurisdiction over this matter to the Office of Administrative Hearings for purposes of conducting the contested case proceeding, the date, time, and place of the public hearing or hearings will be determined by the Administrative Law Judge assigned to this matter by the Office of Administrative Hearings in light of the developing circumstances of this matter. This information will be duly noticed as required by applicable statute and rule.

## **V. Public Participation**

### **A. Right to Counsel and to Present Evidence**

In these proceedings, parties may be represented by legal counsel, or by a person of their choice, or they may represent themselves. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1405.1300, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

### **B. Public Adviser**

The Commission has authorized the Department to name a public adviser for the project. The public adviser is someone who is available to answer questions from the public about the permitting process. In this role, the public adviser may not act as an advocate on behalf of any person. The Department has named Deborah Pile, Manager of the Department's Energy Facilities Permitting Unit, to serve as the Public Adviser for this project. Her address is Minnesota Department of Commerce, 85 - 7th Place East, Suite 500, St Paul, MN 55101-2198 and her phone number is 651-297-2375.

### **C. Commission's Representative; Advice Regarding Procedures**

The Commission's representative in this matter is Robert Cupit, Senior Facility Planner, Minnesota Public Utilities Commission, 121-7<sup>th</sup> Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651) 201- 2257.

The member of the Attorney General's staff who may be contacted for advice on matters dealing with Commission procedures is Lisa A. Crum, Assistant Attorney General, 1100 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 296-1408.

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<sup>4</sup> Minn. Stat. Chapter 14.

<sup>5</sup> Minn. Rules, Chapter 1405.

#### **D. Availability of Materials**

Interested persons may review all materials including all prefiled testimony at the Minnesota Department of Commerce, 85 - 7th Place East, Suite 500, St. Paul, MN 55101-2198 as soon as they have been filed. To arrange a viewing of these materials, interested persons may contact the Public Adviser, Deborah Pile, at the Minnesota Department of Commerce or by phone at 651-297-2375.

#### **E. Parties, Persons, and Intervention**

Currently, the only party to this case is the Applicant, MPLC.<sup>6</sup> The name and address of the person designated to receive all notices on behalf of the Applicant is Mary Beth Jarvis, Communication Director, Minnesota Pipe Line Company, 4111 East 37th Street North, Wichita, Kansas 67220.

Other persons<sup>7</sup> who wish to be granted permission by the Administrative Law Judge to intervene in this matter, must do so pursuant to Minn. Rules, Part 1405.0900. Subpart 1 of that rule prescribes the timing and contents of a petition to intervene. Subpart 2 prescribes the timing and content of any objection to the petition and Subpart 3 sets forth the standards for granting, denying, or requiring consolidation of similar petitions.

The hearing process established under Minn. Rules Chapter 1405 is designed to facilitate public participation, and persons need not intervene as parties to participate. All public participants have significant procedural rights, including, but not limited to, the right to be present throughout the proceeding, to offer direct testimony in oral or written form, to question all persons who testify, and to submit comments to the Administrative Law Judge and the Commission.

Persons who intervene and are granted party status have additional rights and responsibilities, including, but not limited to, the right to object to another's petition for intervention within seven days of service of the petition, the rights to submit direct testimony and conduct cross-examination of other parties' witnesses in the first stage of any two-stage hearing conducted by the administrative law judge pursuant to Minn. Rules, Part 1405.1500, subp. 2, and the responsibilities to submit pre-filed testimony, comply with discovery requests, produce witnesses, file briefs, and serve all documents on all other parties.

The description of rights in this section is summary in nature, as required by Minn. Rules, part 1405.0500, subp. 1, I, and is not intended to be comprehensive. Review Chapter 1405 to identify the scope of rights and authority to act given "persons" or restricted to "parties" under the various provisions of that Chapter.

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<sup>6</sup> Minn. Rules, part 1405.0200, subp. 3 defines "party" as the applicant, persons proposing routes or sites which the board orders to be considered pursuant to Minnesota Statutes, chapter 116C and rules adopted thereunder, and persons granted permission to intervene pursuant to part 1405.0900. State agencies, participating department staff, and citizen committees appointed by the Commission must intervene to attain party status.

<sup>7</sup> Minn. Rules, part 1405.0200, subp. 4 defines "person" as an individual, partnership, joint venture, private or public corporation, association or society, firm, public service company, cooperative, political subdivision, municipal corporation, governmental unit or agency, public utility district, or any other entity, public or private, however organized.

## **VI. Issues to be Addressed**

Parties shall specifically and thoroughly address the requirements of Minn. Stat., Chapter 116I and Minn. Rules, Chapter 4415.

The parties may also raise and address other issues relevant to the Company's proposed route.

## **VII. Procedural Outline**

### **A. Hearing Procedure: Controlling Statutes and Rules**

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62, and Minn. Rules, parts 1405.0200 to 1405.2800. Regarding any issue on which Chapter 1405 is silent, the provisions of Minn. Rules, parts 1400.5100 to 1400.8400 regarding contested cases shall apply and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7829.0100 to 7829.3200.

Hearings may be recessed and reset by the Administrative Law Judge pursuant to Minn. Rules, parts 1405.1400 to 1405.2300.

### **B. Hearing Procedures; Applicable Rules; Availability**

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62 and Minn. Rules, parts 1405.0200 to 1405.2800. Regarding any issue on which Chapter 1405 is silent, the provisions of Minn. Rules, parts 1400.5100 to 1400.8400 regarding contested cases shall apply and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7829.0100 to 7829.3200.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 660 Olive Street, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at [www.revisor.leg.state.mn.us](http://www.revisor.leg.state.mn.us).

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

### **C. Accommodations for Disabilities; Interpreter Services**

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

## **VIII. Time Constraints**

The Commission is required to make a final decision on a route permit application within nine months after the Commission's decision that an application is complete.<sup>8</sup> The Commission's Order finding the application complete is issued contemporaneously with this NOTICE OF HEARING, February 16, 2006. The rule authorizes the Commission to extend this time limit for up to three months for good cause or upon agreement of the Applicant.

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<sup>8</sup> Minn. Rules, Part 4415.0045 - Application Procedures and Requirements.

The Commission asks the Office of Administrative Hearings to conduct contested case proceedings in light of these time constraints and requests that the Administrative Law Judge submit her final report within six months of the Commission's February 16, 2006 Order finding the Company's Route Permit Application complete.

#### **IX. Application of Ethics in Government Act**

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 *et seq.*, apply to powerline siting cases. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 296-5148, with any questions.

#### **X. Ex Parte Communications**

Restrictions on *ex parte* communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

### **ORDER**

1. The Commission hereby refers this case to the Office of Administrative Hearings for contested case proceedings, as set forth above.
2. A prehearing conference shall be held on Friday, March 17, 2006 at 9:30 a.m. in the Large Hearing Room at the offices of Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101.
3. The date, time, and place of the public hearing will be set by the Administrative Law Judge and properly noticed in due course.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 297-4596 (voice), or 1-800-627-3529 (MN relay service).